

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

AUG 15 2011

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff

vs.

GREEN POINT PARTNERS, INC., a Nevada
corporation, d/b/a TECHNOLOGY
RECYCLING SERVICES; DISCOUNT PC, a
Texas General Partnership; JAMES R.
MARTZALL, an individual, and MARVIN
THOMAS, an individual

Defendants.

Case No. 5:11-cv-00235-HLH

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

FIRST AMENDED COMPLAINT

Microsoft Corporation ("Microsoft") brings this action for infringement of Microsoft's copyrights and trademarks in its software programs by Green Point Partners, Inc., a Nevada corporation, d/b/a Technology Recycling Services; Discount PC, a Texas General Partnership; James R. Martzall, an individual; and Marvin Thomas, an individual (collectively "Defendants"). Defendants distributed unauthorized copies of Microsoft software even after Microsoft warned them about their illegal activity and its consequences. As a result, Defendants have infringed Microsoft's copyrights and trademarks, violated the Lanham Act by falsely designating the origin of software and/or related components, and engaged in unfair competition. Microsoft seeks damages, an accounting, the imposition of a constructive trust upon Defendants' illegal profits, and injunctive relief.

THE PARTIES

1. Microsoft is a Washington corporation with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft develops, markets, distributes and licenses computer software.

2. Upon information and belief, defendant Green Point Partners, Inc. is or was a Nevada corporation that does business as Technology Recycling Services on the Internet and in San Antonio, Texas. Green Point Partners, Inc., a Nevada corporation, d/b/a Technology Recycling Services is engaged in the business of advertising, marketing, installing, offering, and distributing computer hardware and software, including purported Microsoft software.

3. Upon information and belief, defendant Discount PC is a Texas General Partnership that does business on the Internet and in San Antonio, Texas. Discount PC is engaged in the business of advertising, marketing, installing, offering, and distributing computer hardware and software, including purported Microsoft software.

4. Upon information and belief, defendant James R. Martzall, an individual, is or was an owner, operator, officer, shareholder, and/or otherwise controls Green Point Partners, Inc., a Nevada corporation and is a general partner in Discount PC, a Texas General Partnership. Upon information and belief, James R. Martzall transacts substantial business in this district. Upon information and belief, James R. Martzall (a) personally participated in and/or (b) had the right and ability to supervise, direct and control the wrongful conduct alleged in this Complaint and (c) derived direct financial benefit from that wrongful conduct.

5. Upon information and belief, defendant Marvin Thomas, an individual, is or was an owner, operator, officer, shareholder, and/or otherwise controls Green Point Partners, Inc., a Nevada corporation, d/b/a Technology Recycling Services a/k/a Technology Recycling and is a general partner in Discount PC, a Texas General Partnership. Upon information and belief, Marvin Thomas transacts substantial business in this district. Upon information and belief, Marvin Thomas (a) personally participated in and/or (b) had the right and ability to supervise, direct and control the wrongful conduct alleged in this Complaint and (c) derived direct financial benefit from that wrongful conduct.

6. Upon information and belief, each of the defendants was, at all times mentioned in this Complaint, acting as the agent, employee, or alter ego of every other defendant, and in doing the things mentioned herein, was acting within the course and scope of such agency,

employment, or other relationship and with full knowledge and consent of each of the other defendants.

JURISDICTION

7. This Court has subject matter jurisdiction over Microsoft's claims for trademark infringement, copyright infringement and related claims pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has supplemental jurisdiction over Microsoft's claims arising under the laws of Texas pursuant to 28 U.S.C. § 1367(a) because these claims are so related to Microsoft's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

VENUE

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because (a) the acts of infringement and other wrongful conduct alleged occurred in the Western District of Texas, (b) Defendants may be found in the Western District of Texas, and (c) Defendants have a sufficient connection with the Western District of Texas to make venue proper in this district, all as alleged in this Complaint.

FACTS COMMON TO ALL CLAIMS

10. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft's software programs are recorded on discs, and they are packaged and distributed together with associated proprietary materials such as user's guides, user's manuals, end user license agreements, and other components.

11. Microsoft Windows XP: Microsoft has developed, advertises, markets, distributes, and licenses a software package known as Microsoft Windows XP Professional ("Windows XP"). Windows XP is an operating system for desktop and laptop systems. It performs a number of computer-related operations including, but not limited to, providing support for various applications and allowing remote access to data and applications stored on Windows XP desktops from network connections. Microsoft holds a valid copyright in

Windows XP (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows XP, bearing the number TX 5-407-055, is attached hereto as Exhibit 1 and is incorporated by reference.

12. Microsoft has also duly and properly registered a number of trademarks and a service mark in the United States Patent and Trademark Office on the Principal Register, including, but not limited to:

- A. "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
- B. "MICROSOFT," Trademark Registration No. 1,256,083, for computer hardware and software manuals, newsletters, and computer documentation;
- C. WINDOWS, Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit; and
- D. COLORED FLAG DESIGN, Trademark Registration No. 2,744,843, for computer software;

True and correct copies of the Trademark Registrations for A through D above are attached hereto as Exhibits 2 through 5, respectively, and are incorporated by reference.

Defendants' Infringement

13. Defendants are engaged in the advertising, marketing, installation, offering and distribution of computer hardware and software, including programs covered by Microsoft's registered copyrights and bearing Microsoft's registered trademarks or imitations thereof.

14. By means including a letter dated July 21, 2010, Microsoft informed Defendants that it had received a report that Defendants may have distributed illegal Microsoft software. The letter explained the consequences of making and distributing infringing copies of Microsoft software on computers.

15. Nevertheless, in or about October 2010, Defendants distributed to an investigator numerous computer systems with unauthorized copies of Windows XP installed on them.

16. On information and belief, this is not an isolated incident. Rather, Defendants have been and continue to be involved in advertising, marketing, installing, offering, and/or distributing counterfeit and infringing copies of Microsoft's software and/or related components to unidentified persons or entities. On information and belief, Defendants' distributions of purported Microsoft software are the result of Defendants' advertising and marketing the availability of such materials.

17. On information and belief, Defendants' wrongful conduct includes the advertising, marketing, installing, and/or distribution of "infringing materials," specifically reproductions, copies, or colorable imitations of Microsoft's copyrighted materials and/or the Microsoft trademarks, logos, and service mark described in this Complaint.

18. On information and belief, Defendants have committed and are continuing to commit acts of copyright and trademark infringement against Microsoft. On information and belief, at a minimum, Defendants were willfully blind and acted in reckless disregard of Microsoft's registered copyrights and marks.

19. On information and belief, Microsoft has been harmed by the advertising activities, including the unauthorized use of Microsoft's copyright protected material, and the unauthorized use of Microsoft's marks to describe the items that Defendants are distributing. Through this conduct, Defendants have misappropriated Microsoft's advertising ideas and style of doing business and infringed Microsoft's copyrights, titles, and slogans.

20. On information and belief, the injuries and damages that Microsoft has sustained have been directly and proximately caused by Defendants' wrongful misappropriation of Microsoft's advertising ideas and style of doing business and infringement of Microsoft's copyrights, titles, and slogans.

First Claim

[Copyright Infringement – 17 U.S.C. § 501, et seq.]

Against Defendants

21. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 20, inclusive.

22. Microsoft is the sole owner of Microsoft Windows XP and of the corresponding copyright and Certificate of Registration.

23. Defendants have infringed the copyrights in Microsoft's software, including but not limited Microsoft Windows XP, by distributing infringing materials in the United States of America without approval or authorization from Microsoft.

24. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Microsoft's registered copyrights.

25. As a result of their wrongful conduct, Defendants are liable to Microsoft for copyright infringement. 17 U.S.C. § 501. Microsoft has suffered damages. Microsoft is entitled to recover damages, which include any and all profits Defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

26. In addition, because Defendants' infringement has been willful, within the meaning of the Copyright Act, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).

27. Microsoft is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value, (b) Defendants' infringement harms Microsoft's such that Microsoft could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

28. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 17 U.S.C. § 505.

Second Claim

[Trademark Infringement – 15 U.S.C. § 1114]

Against Defendants

29. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 28, inclusive.

30. Defendants' activities constitute infringement of Microsoft's federally registered trademarks and service mark in violation of the Lanham Trademark Act, including but not limited to 15 U.S.C. § 1114(1).

31. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software and related items of others in the same or related fields.

32. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software programs or services of Microsoft.

33. The infringing materials that Defendants have and are continuing to use, offer, advertise, market, install, or distribute are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

34. Further, Defendants' activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendants are using, advertising, marketing, installing, offering, or distributing originate with or are authorized by Microsoft, to the damage and harm of Microsoft, its licensees, and the public.

35. Upon information and belief, Defendants used, offered, advertised, marketed, installed, or distributed infringing material with the purposes of misleading or confusing

customers and the public as to the origin and authenticity of the infringing materials and of trading upon Microsoft's business reputation.

36. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Microsoft's registered marks.

37. As a result of their wrongful conduct, Defendants are liable to Microsoft for trademark infringement. 15 U.S.C. § 1114(1). Microsoft has suffered damages. Microsoft is entitled to recover damages, which include any and all profits Defendants have made as a result of their wrongful conduct. 15 U.S.C. § 1117(a).

38. In addition, because Defendants' infringement of Microsoft's trademarks and service mark was willful, within the meaning of the Lanham Act, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. § 1117(b). Alternatively, Microsoft is entitled to statutory damages under 15 U.S.C. § 1117(c).

39. Microsoft is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order compelling the impounding of all infringing materials being used, offered, marketed, or distributed by Defendants pursuant to 15 U.S.C. § 1116, subsections (a) and (d)(1)(A). Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's trademarks and service mark are unique and valuable property which have no readily determinable market value, (b) Defendants' infringement constitutes harm to Microsoft's such that Microsoft could not be made whole by any monetary award, (c) if Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of the infringing materials, and (d) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

40. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 15 U.S.C. § 1117.

Third Claim

[False Designation Of Origin, False Description And Representation Of Microsoft

Packaging -- 15 U.S.C. § 1125 et seq.]

Against Defendants

41. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 40, inclusive.

42. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

43. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify, software or services of Microsoft.

44. Microsoft has also designed distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software programs.

45. Defendants' wrongful conduct includes the use of Microsoft's marks, name, and/or imitation visual designs, specifically displays, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Microsoft visual designs, in connection with their goods and services.

46. Upon information and belief, Defendants engaged in such wrongful conduct with the willful purpose of misleading or confusing customers and the public as to the origin and authenticity of the goods and services offered, marketed or distributed in connection with Microsoft's marks, name, and imitation visual designs, and of trading upon Microsoft's goodwill and business reputation. Defendants' conduct constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or misleading representation that the imitation visual

images originate from or are authorized by Microsoft, all in violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

47. Defendants' wrongful conduct is likely to continue unless restrained and enjoined.

48. As a result of Defendants' wrongful conduct, Microsoft has suffered and will continue to suffer damages. Microsoft is entitled to injunctive relief and to an order compelling the impounding of all imitation marks and visual designs being used, offered, advertised, marketed, installed, or distributed by Defendants. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's marks, name and visual designs are unique and valuable property which have no readily-determinable market value, (b) Defendants' advertising, marketing, installation, or distribution of imitation visual designs constitutes harm to Microsoft such that Microsoft could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

Fourth Claim

[Texas Common Law Unfair Competition]

Against Defendants

49. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 48, inclusive.

50. The acts and conduct of Defendants as alleged above in this complaint constitute unfair competition pursuant to the common law of the State of Texas.

51. Defendants' acts and conduct as alleged above have damaged and will continue to damage Microsoft and have resulted in an illicit gain of profit to Defendants in an amount that is unknown at the present time.

Fifth Claim

[For Imposition Of A Constructive Trust Upon Illegal Profits]

Against Defendants

52. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 51, inclusive.

53. Defendants' conduct constitutes deceptive and wrongful conduct in the nature of passing off the infringing materials as genuine Microsoft software or related components approved or authorized by Microsoft.

54. By virtue of Defendants' wrongful conduct, Defendants have illegally received money and profits that rightfully belong to Microsoft.

55. Upon information and belief, Defendants hold the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced.

56. Defendants hold the money and profits they have illegally received as constructive trustees for the benefit of Microsoft.

Sixth Claim

[Accounting]

Against Defendants

57. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 56, inclusive.

58. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendants that are attributable to their acts of infringement.

59. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.

60. The amount of money due from Defendants to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendants of the precise number of units of infringing material offered for distribution and distributed by Defendants.

PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully requests judgment as follows:

- (1) That the Court enter a judgment against Defendants as indicated below:
 - (a) that Defendants have willfully infringed Microsoft's rights in the following federally registered copyright, in violation of 17 U.S.C. § 501: TX 5-407-055 ("Windows XP");
 - (b) that Defendants have willfully infringed Microsoft's rights in the following federally registered trademarks and service mark, in violation of 15 U.S.C. § 1114:
 - (1) 1,200,236 ("MICROSOFT");
 - (2) 1,256,083 ("MICROSOFT");
 - (3) 1,872,264 ("WINDOWS"); and
 - (4) 2,744,843 (COLORED FLAG DESIGN);
 - (c) that Defendants have committed and are committing acts of false designation of origin, false or misleading description of fact, and false or misleading representation against Microsoft, in violation of 15 U.S.C. § 1125(a);
 - (d) that Defendants have engaged in unfair competition in violation of Texas common law; and
 - (e) that Defendants have otherwise injured the business reputation and business of Microsoft by the acts and conduct set forth in this Complaint.
- (2) That the Court issue injunctive relief against Defendants, and that Defendants, their directors, principals, officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with Defendants, be enjoined and restrained from:
 - (a) imitating, copying, or making any other infringing use or infringing distribution of the software programs, components and/or items now or hereafter protected by the following copyright Certificate Registration No. : TX 5-407-055 ("Windows XP");

or the software programs, components and/or items protected by the following
Trademark Registration Nos.:

- (1) 1,200,236 ("MICROSOFT");
- (2) 1,256,083 ("MICROSOFT");
- (3) 1,872,264 ("WINDOWS"); and
- (4) 2,744,843 (COLORED FLAG DESIGN);

and any other items or works now or hereafter protected by any Microsoft trademark or copyright;

(b) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any software program, component, and/or item bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed in Sections (2)(a) above;

(c) using any simulation, reproduction, counterfeit, copy, or colorable imitation of Microsoft's registered trademarks, service mark, or copyright including, but not limited to the Trademark, Service Mark, and Copyright Registration Numbers listed in Section (2)(a) above, in connection with the manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, import, advertisement, promotion, or display of any software program, component, and/or item not authorized or licensed by Microsoft;

(d) using any false designation of origin or false or misleading description or false or misleading representation that can or is likely to lead the trade or public or individuals erroneously to believe that any software program, component, and/or item has been manufactured, assembled, produced, distributed, offered for distribution, circulation, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for Microsoft, when such is not true in fact;

(e) engaging in any other activity constituting an infringement of any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to use or to exploit, these trademarks, service mark, and/or copyrights; and

(f) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above.

(3) That the Court enter an order pursuant to 15 U.S.C. § 1116(a)(d)(1)(A) and 17 U.S.C. § 503 impounding all counterfeit and infringing copies of purported Microsoft software and/or materials bearing any of Microsoft's trademarks or service mark, and any related item, including business records, that is in Defendants' possession or under their control;

(4) That the Court enter an order declaring that Defendants hold in trust, as constructive trustees for the benefit of Microsoft, their illegal profits obtained from their distribution of counterfeit and infringing copies of Microsoft's software, and requiring Defendants to provide Microsoft a full and complete accounting of all amounts due and owing to Microsoft as a result of Defendants' illegal activities.

(5) That the Court order Defendants to pay Microsoft's general, special, actual, and statutory damages as follows:

(a) Microsoft's damages and Defendants' profits pursuant to 17 U.S.C. § 504(b), or alternatively, enhanced statutory damages pursuant to 17 U.S.C. § 504(c), and 17 U.S.C. § 504(c)(2), for Defendants' willful infringement of Microsoft's copyrights;

(b) Microsoft's damages and Defendants' profits pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b) for Defendants' willful violation of Microsoft's registered trademarks and service mark, or in the alternative, statutory damages pursuant to 15 U.S.C. § 1117(c) for each counterfeit mark; and

(c) Microsoft's damages and Defendants' profits pursuant to Texas common law.

(6) That the Court order Defendants to pay to Microsoft both the costs of this action and the reasonable attorneys' fees incurred by it in prosecuting this action; and

(7) That the Court grant to Microsoft such other and additional relief as is just and proper.

Respectfully submitted,



John R. Nelson
Texas State Bar No. 00797144
Locke Lord Bissell & Liddell LLP
100 Congress Avenue, Suite 300
Austin, TX 78701
(512) 305-4868 (Telephone)
(512) 305-4800 (Facsimile)

**ATTORNEYS FOR PLAINTIFF
MICROSOFT CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of July, 2011, the following counsel of record has been served using the CM/ECF system:

Zachary J. Fanucchi
ROBERT WACHSMUTH & ASSOCIATES
9311 San Pedro, Suite 707
San Antonio, Texas 78216

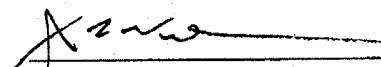

John R. Nelson

EXHIBIT 1

06/03/02 MON 13:45 FAA 400004141

CERTIFICATE OF REGISTRATION



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
 REGISTER OF COPYRIGHTS
 United States of America

FORM TX

For a Nonperiodic Literary Work
UNITED STATES COPYRIGHT OFFICETX 5-407-755

EFFECTIVE DATE OF REGISTRATION

Nov. 6, 2001

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK
 Microsoft Windows XP Professional

PREVIOUS OR ALTERNATIVE TITLES

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collection work in which the contribution appeared. Title of Collection Work

If published in a periodical or serial give Volume Number Year Date On Page

2

NAME OF AUTHOR
 Microsoft Corporation

DATES OF BIRTH AND DEATH
 Year Born Year Died

Was this contribution to the work a "work made for hire"?
☐ Yes ☒ No

AUTHOR'S NATIONALITY OR DOMICILE
 OR Country of Birth
☒ Citizen of U.S. ☐ Domiciled in U.S.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Assignment ☐ Yes ☒ No ☐ Incomplete or otherwise not a contribution
 Publication ☐ Yes ☒ No

NOTE

Under the law, the "author" of a "work made for hire" is the employer or the person for whom the work was prepared. For any work that is not a "work made for hire," the author is the individual who created the work. For any work that is a "work made for hire," the author is the employer or the person for whom the work was prepared. For any work that is not a "work made for hire," the author is the individual who created the work. For any work that is a "work made for hire," the author is the employer or the person for whom the work was prepared.

NATURE OF AUTHORSHIP Briefly describe the nature of material created by this author to which copyright is claimed.

NAME OF AUTHOR

DATES OF BIRTH AND DEATH
 Year Born Year Died

Was this contribution to the work a "work made for hire"?
☐ Yes ☒ No

AUTHOR'S NATIONALITY OR DOMICILE
 OR Country of Birth
☒ Citizen of U.S. ☐ Domiciled in U.S.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Assignment ☐ Yes ☒ No ☐ Incomplete or otherwise not a contribution
 Publication ☐ Yes ☒ No

NATURE OF AUTHORSHIP Briefly describe the nature of material created by this author to which copyright is claimed.

NAME OF AUTHOR

DATES OF BIRTH AND DEATH
 Year Born Year Died

Was this contribution to the work a "work made for hire"?
☐ Yes ☒ No

AUTHOR'S NATIONALITY OR DOMICILE
 OR Country of Birth
☒ Citizen of U.S. ☐ Domiciled in U.S.

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
 Assignment ☐ Yes ☒ No ☐ Incomplete or otherwise not a contribution
 Publication ☐ Yes ☒ No

NATURE OF AUTHORSHIP Briefly describe the nature of material created by this author to which copyright is claimed.

3

DATE IN WHICH CREATION OF THIS WORK WAS COMPLETED
 Year Month Day
 2001

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
 Complete this information if the work has been published.
 Year Month Day Year
 2001 10 25
 U.S.A.

4

COPYRIGHT CLAIMANT'S Name and address must be given even if the claimant is the same as the author given in space 2.
 Microsoft Corporation
 Law and Corporate Affairs
 One Microsoft Way
 Redmond, WA 98052

Application received
 NOV 6 2001
 ONE DEPOSIT RECEIVED

TWO DEPOSITS RECEIVED
 NOV 6 2001
 FUNDS RECEIVED

TRANSFER If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.

MORE ON BACK

• Complete all applicable spaces (including 5-8) on the reverse side of this page.
 • Use dotted indicia.

EX-107 (REVISED 10/97)
 Page 1 of 2 pages

EXHIBIT 2

Int. Cls.: 9 and 42

Prior U.S. Cls.: 26, 38 and 101

United States Patent and Trademark Office

Reg. No. 1,200,236
Registered Jul. 6, 1982

TRADEMARK
SERVICE MARK
Principal Register

MICROSOFT

Microsoft (partnership)
Suite 819
10800 NE 8th
Bellevue, Wash. 98004

VICES, in CLASS 42 (U.S. Cl. 101).

First use Nov. 12, 1975; in commerce Nov. 12, 1975.

For: COMPUTER PROGRAMS, in CLASS 9
(U.S. Cls. 26 and 38).

Ser. No. 236,080, filed Oct. 22, 1979.

First use Nov. 12, 1975; in commerce Nov. 12, 1975.

B. H. VERTIZ, Primary Examiner

For: COMPUTER PROGRAMMING SER-

CHERYL LYNNE HENDERSON, Examiner

Certificate of Correction

Registered July 6, 1982

Registration No. 1,200,236

Microsoft Corporation, by change of name and assignment from Microsoft

It is hereby certified that the above identified registration is in error requiring correction as follows:

In the statement, column 1, before line 1, *Microsoft Corporation (Washington corporation), 10700 Northup Way, Bellevue, Wash. 98004, by change of name and assignment from* should be inserted.

The said registration should be read as corrected above.

Signed and sealed this 3rd day of April 1984.



Attest:

Michael E. Smith

Richard M. Smith

EXHIBIT 3

Int. Cl.: 16

Prior U.S. Cl.: 38

United States Patent and Trademark Office

Reg. No. 1,256,083

Registered Nov. 1, 1983

TRADEMARK
Principal Register

MICROSOFT

Microsoft Corporation (Washington corporation)
10700 Northup Way
Bellevue, Wash. 98004

For: COMPUTER HARDWARE AND SOFTWARE MANUALS; NEWSLETTER FEATURING INFORMATION ABOUT COMPUTER HARDWARE AND SOFTWARE AND GENERAL INFORMATION RELATING TO COMPUTERS FOR MANUFACTURERS, DISTRIBUTORS, AND USERS OF COMPUTERS AND COMPUTER SOFTWARE; AND COMPUTER DOCUMENTATION—NAMELY, REFERENCE, USER, INSTRUCTIONAL, AND GENERAL UTILITIES MANUALS AND DATA SHEETS FOR COMPUTER HARDWARE AND SOFTWARE USERS, in CLASS 16 (U.S. Cl. 38).

First use Nov. 1975; in commerce Nov. 1975.

Ser. No. 373,992, filed Jul. 12, 1982.

J. H. WEBB, Examining Attorney

EXHIBIT 4

Int. CL: 9

Prior U.S. CL: 38

United States Patent and Trademark Office Reg. No. 1,872,264
Registered Jan. 10, 1995

**TRADEMARK
PRINCIPAL REGISTER**

WINDOWS

MICROSOFT CORPORATION (DELAWARE
CORPORATION)
ONE MICROSOFT WAY
REDMOND, WA 98056399

FIRST USE 10-18-1983; IN COMMERCE
10-18-1983.

SEC. 2(F).

FOR: COMPUTER PROGRAMS AND MANU-
ALS SOLD AS A UNIT; NAMELY, GRAPHICAL
OPERATING ENVIRONMENT PROGRAMS
FOR MICROCOMPUTERS, IN CLASS 9 (U.S.
CL. 38).

SER. NO. 74-090,419, FILED 2-20-1990.

ESTHER BELENKER, EXAMINING ATTOR-
NEY

EXHIBIT 5

Int. Cl.: 9

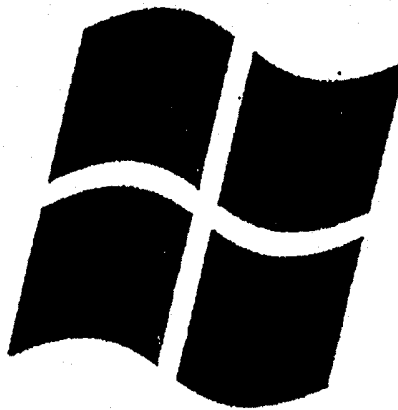
Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,744,843

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**TRADEMARK
PRINCIPAL REGISTER**



MICROSOFT CORPORATION (WASHINGTON CORPORATION)
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FOR: COMPUTER SOFTWARE, NAMELY, OPERATING SYSTEM PROGRAMS AND UTILITIES, WORD PROCESSING PROGRAMS, ADDRESS BOOK PROGRAMS, CALCULATOR PROGRAMS, TERMINAL EMULATION PROGRAMS, PROGRAMS FOR DOWNLOADING AND PLAYING AUDIO AND VIDEO, PROGRAMS FOR MANAGING COMPUTER POWER SUPPLIES, PROGRAMS FOR USE IN TRANSMITTING DATA BETWEEN COMPUTERS AND OTHER ELECTRONIC DEVICES, COMPUTER MAINTENANCE PROGRAMS, PROGRAMS FOR PROVIDING ENHANCED SPECIAL EFFECTS WHILE RUNNING GAME PROGRAMS, PROGRAMS FOR USE IN ACCESSING AND PLAYING CDS AND DVDS, BROWSER PROGRAMS, ACCESSIBILITY PROGRAMS TO MAKE COMPUTERS MORE USEFUL FOR PERSONS WITH DISABILITIES; PAINT PROGRAMS, NAMELY, COMPUTER SOFTWARE FOR USE IN CREATING, EDITING AND COLORING DRAWINGS; ELECTRONIC MAIL PROGRAMS; PROGRAMS FOR ELECTRONIC CONFERENCING; COMPUTER SOFTWARE FOR PLAYING VIDEO AND ELECTRONIC GAMES AND COMPUTER GAMES; USER MANUALS THEREFOR SOLD AS A UNIT THEREWITH; COMPUTERS; COMPUTER HARDWARE; AND FULL LINE OF COMPUTER APPLICATION PROGRAMS; COMPUTER PERIPHERALS; COMPU-

TER MICE AND POINTING DEVICES; HAND HELD COMPUTERS; DVD PLAYERS; DIGITAL CELLULAR PHONES; BLANK SMART CARDS, NAMELY, ENCODED ELECTRONIC CHIP CARDS CONTAINING PROGRAMMING FOR VARIOUS BUSINESS AND TECHNICAL FUNCTIONS; COMMUNICATION SERVERS, AND COMPUTER APPLICATION PROGRAMS AND OPERATING SYSTEM PROGRAMS FOR USE THEREWITH; COMPUTER PROGRAMS FOR MANAGING COMMUNICATIONS AND DATA EXCHANGE BETWEEN COMPUTERS AND ELECTRONIC DEVICES; VIDEO GAME MACHINES FOR USE WITH TELEVISIONS AND COMPUTERS, AND OPERATING SYSTEM SOFTWARE FOR USE THEREWITH; OPERATING SYSTEM SOFTWARE FOR USE IN PLAYING ELECTRONIC GAMES; COMPUTER HARDWARE AND PERIPHERALS; COMPUTER KEYBOARDS; COMPUTER AND VIDEO GAME JOYSTICKS; VIDEO GAME INTERACTIVE CONTROL FLOOR PADS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 3-26-2001; IN COMMERCE 3-26-2001.

OWNER OF U.S. REG. NOS. 1,815,350, 1,816,354, AND OTHERS.

THE MARK CONSISTS OF A FLAG DESIGN. THE UPPER LEFT PORTION OF THE FLAG IS RED, THE LOWER LEFT PORTION IS BLUE, THE UPPER RIGHT PORTION IS GREEN, AND THE LOWER RIGHT PORTION IS YELLOW. COLOR IS CLAIMED AS PART OF THE MARK.